In 1979, a Coca Cola from some vending machines cost thirty-five cents ($.35) while a call from a public telephone in Southwestern Bell's territory cost twenty-five cents ($.25). Today, seventeen years later, the same Coca Cola costs between sixty cents ($.60) to a dollar ($1.00), while the same call from a public telephone in Southwestern Bell's territory still costs twenty-five cents ($.25). It would thus appear that the costs of vended products in a highly competitive market have increased, but the regulated costs of pay telephone services has remained artificially low. The effect of regulation has been to keep the rates for sent-paid local pay telephone service below cost with a subsidy from other services through the rate case process.

In reviewing the proposed rule, the Commission has made a pre-determination that the appropriate rate for a sent-paid local pay telephone call is twenty-five cents ($.25). This rate was proposed without any determination of the actual cost of providing a sent-paid local call from a pay telephone. Instead, the Commission is moving forward in a rule-making proceeding, which, by its very nature, does not allow for the development of a record to support any rate determination.

Southwestern Bell's public pay telephone rate was established by the Commission at twenty-five cents ($.25) in 1979 on a state-wide basis. This rate has been left unchanged through at least six general rate proceedings. For the majority of the last seventeen years, there has not been cost information filed for Southwestern Bell's public telephone service as it was a rate that was set in the general rate design portion of the rate cases. In the absence of the cost studies, there has been an implicit recognition that the twenty-five cent ($.25) rate for sent-paid local calls is subsidized by other services offered through the public telephones. The preliminary results of costing information recently performed indicates that Southwestern Bell's cost of providing a sent-paid local call on a state-wide basis in Texas is approximately forty cents ($.40) per call, not including the expenses associated with commission.

While sent-paid local calls may not be recovering the costs of providing Southwestern Bell's public telephone service on a state-wide basis, an examination should also be made as to whether the costs are recovered based upon all services offered through a public telephone such as intra-LATA toll, operator services, etc. Before undertaking this examination, it is important to recognize that each service offered through public telephones has its own costs that must be recovered. Therefore, the more appropriate inquiry is whether the contribution from other services is sufficient to recover the costs of providing public telephones on an overall basis. The answer to that inquiry is yes; in general Southwestern Bell's public telephone service is profitable. This not true for all of Southwestern Bell's public telephones, however, as there has been an increase in the competition in many of the other services offered through the public telephones such as intra-LATA toll and operator services. For example, over the last eighteen (18) months, Southwestern Bell estimates that it has lost 30% of its intra-LATA toll traffic from public telephones by end-users dialing "10XXX" codes or "1-800" codes so that intra-LATA toll calls are carried by the interexchange carriers. Further, while approximately nearly 70% of the revenues from public telephones are from local calling, 93% of the local calling is on a sent-paid basis (excluding inmate service). This means that the vast majority of the calling from the public telephones is local calling and most of the local calling is being provided at a non-compensatory rate. As revenues from the other services that help support the placement of public telephones are declining, it should be no surprise that Southwestern Bell has already removed 6,000 to 7,000 public telephones over the last two years as being uneconomical.

This trend will certainly continue in the future if sent-paid local calls must be provided at non-compensatory rates. In the post HB-2128 environment, pay telephone service must be evaluated on its own merits. Southwestern Bell's public telephone service is expressly recognized as being competitive in the legislation as it is included in the Basket III Competitive Services. Section 3.358(a)(5), PURA 95. In such a competitive environment, individual pay telephones, or groups of pay telephones, will have to be evaluated to determine whether they warrant remaining in service. Even though a pay telephone, or group of pay telephones, might have a large number of sent-paid local calls, if they do not have a sufficient amount of other revenues to subsidize the non-compensatory local call rates, they may have to be removed. In this regard, Southwestern Bell estimates that between 20,000 to 30,000 of its 86,000 Texas public telephones are only marginally profitable and are in danger of removal if the sent-paid local call rate is not increased to improve the profitability of the telephones.[3]

These concerns are not solely those of Southwestern Bell. All providers of pay telephone services must address these same issues and make similar evaluations. In order for any provider to be competitive, it must be assured that there is a reasonable opportunity for every pay telephone in the field to make a profit. It has been

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[3] This could have a tremendous impact on those public telephones that could be considered public interest or public need telephones. While there may be debate about what constitutes a public need pay telephone, it would be fair to probably include pay telephones at such locations as housing projects, public facilities, neighborhood stores in underdeveloped areas, city parks, etc., which typically have less traffic than other locations. Southwestern Bell has a large number of locations that could be considered public need. For example, while Southwestern Bell estimates that it has approximately 70% of the pay telephones, it only has approximately 60% of the pay telephone traffic. In a rate-of-return environment, public need pay telephones could be sustained on the basis that the company's overall revenues were reasonably protected with the non-compensating sent-paid local call rate. The same is not true in a competitive marketplace without rate-of-return residual rate making.

Southwestern Bell's observation that in those instances when it removes one of its public telephones on the basis it is unprofitable and it is subsequently replaced by a private pay telephone, the private pay telephone is also removed within six months. In short, a location that is not profitable for one pay telephone provider is usually not profitable for any pay telephone provider.

In order to assure that pay telephones that have a preponderance of sent-paid local calls can remain profitable in this new regulatory environment, the Commission should establish the sent-paid local call maximum rate at an amount that allows all pay telephone providers an opportunity to make such telephones profitable, and allows the marketplace to work. In that regard, Southwestern Bell suggests that the rule should specify that the maximum rate that can be charged for sent-paid local calls is fifty cents ($.50). Setting the maximum rate at fifty cents ($.50) does not mean all rates will immediately rise to fifty cents ($.50). After all, this is a highly competitive business. Rates may vary according to geography, foot traffic, frequency, etc. Moreover, setting the maximum rate to fifty cents ($.50) insures appropriate cost recovery in a number of special situations. For example, because some facilities are used infrequently, concessioneires at places like football stadiums charge more than is charged outside the stadium. This does not mean a non-competitive market; it simply reflects that fixed cost recovery must occur one day a week rather than seven. The pay telephone business is similar; to insure wide availability of pay telephones at public places (e.g., Erwin Center and Memorial Stadium) the Commission must take into account that telephones placed there are used infrequently, and even then primarily for local calls. A maximum rate of fifty cent ($.50) recognizes these realities. This amount should allow pay telephone providers a reasonable opportunity to make sent-paid local calls profitable. It will also help to insure that those public interest pay telephone locations that do not generate sufficient long distance toll calls or other revenues to make a set profitable can be maintained at their present locations.

At the time of the public hearing on October 5, 1995, the only comment against raising the local pay telephone rate to fifty cents ($.50) was by Consumer's Union who stated that the Legislature intended the rate to be twenty-five cents ($.25) until something happens at some point in the future to require the rate to be higher. There is nothing in the Legislative history indicating that the Legislature wanted to leave the rate at twenty-five cents ($.25). To the contrary, the Legislature considered several higher amounts in early drafts of the PURA 95. It was in the final hours of the Legislative session that any specific ceiling was removed from the Legislation and the Commission was charged at setting an appropriate ceiling. This demonstrates an intention on the part of the Legislature that this Commission should exercise its "specialized expertise" in the area of telecommunications regulation in determining what would be an appropriate charge for sent-paid local calls from pay telephones. There certainly was no indication of any intent by the Legislature that the Commission should establish the current rate by rule without any inquiry into what would be an appropriate rate.

The legislature has previously endorsed fifty cents ($.50) as an appropriate local rate in some circumstances. In §3.306, hotels and motels are precluded from charging more than fifty cents ($.50) for a local call in which operator assistance is not used. Surely, a fifty cent ($.50) pay telephone rate is justified as that service must recover all of the costs of keeping the service operational. In the hotel situation, administrative, room to room, and other uses share the expense of the telephone system.

Finally, it should be noted that a number of other states have already adopted rates allowing pay telephone providers to charge maximum rates in excess of twenty-five cents ($.25) for local pay telephone calls. For example, six states, including Illinois, Nebraska, Wyoming, Iowa, North Dakota and Wisconsin now allow thirty-five ($.35) cents to be charged per call and Wisconsin has de-tariffed pay telephones. Ten states allow a local overtime option, some with caps up to a dollar (e.g., Kentucky and South Carolina) and one allows $.25 per minute with no cap (i.e., Mississippi). While other states have not moved to increase pay telephone rates, many allow pay telephone providers to charge rates for additional services to recover costs that are presently recovered in general revenues (e.g., charges for local directory assistance services from pay telephones). In its application in Docket No. 10381, relating to changing the rates for Directory Assistance Services[2], Southwestern Bell established that there is a cost to provide local directory assistance services from its public telephones. The Commission denied Southwestern Bell's request to charge for local Directory Assistance from any pay telephones. Therefore, in addition to the total revenues from all services offered at public telephones having to subsidize the costs of sent-paid local calls, those revenues also continue to have to subsidize the costs of Directory Assistance services

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[2] Consolidated Docket Nos. 10381, 10122 & 10123; Application of Southwestern Bell Telephone Company to Change and Restructure Rate for Directory Assistance; Public Utility Commission of Texas.

offered from public telephones.[3] Accordingly, there is no basis to maintain an artificially low rate in Texas of twenty-five cents ($.25) per sent-paid local call when the trend across the country is to the contrary.

II.
Charge for 800 Calls

Southwestern Bell is concerned about the language in the rule that allows set-use charges of up to twenty-five cents ($.25) per 800 number call dialed on a pay telephone. The problem this creates is that the Federal Communications Commission has ordered that local calls from pay telephones to the Telecommunications Relay Service ("TRS") Centers must be free of charge. Memorandum Order, CC Docket 90-571, Released August 25, 1995. The rule states that imposition of use fees must not be inconsistent with federal law. Proposed Rule (h)(1)(B). As the proposed section (h)(1)(D) specifies exceptions for calls to long distance carriers, an additional exception should be listed for calls to Telecommunications Relay Service Centers.

III.
Enforcement of Pay Telephone Rules

The proposed rules require that a dominant certificated telecommunications utility not provide customer-owned pay telephone service to any person until that person

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3 It can also be said that the costs of providing local Directory Assistance service from public telephones is subsidized by other Directory Assistance services. To the extent that all revenues associated with public telephones are considered in viewing the profitability of the public telephones, the costs of providing those other services must also be considered.

has provided proof that they have registered with the Commission, which apparently will be by supplying a copy of a Commission provided Proof of Registration form. Section 23.54(b)(2). This provision effectively makes the incumbent local exchange company the enforcer of the Commission's new pay telephone rules. Further, the provision has no effect on the provision of pay telephone services from non-dominant certificated telecommunications utilities.

Specifically, in the past the Commission has not had strong power to regulate the provision of private pay telephone service and has sometimes attempted to do so through rules and regulations in the tariffs of the certificated local exchange companies. This has been an extremely competitive market and there have been complaints about the local exchange companies being in the position of both enforcing the rules and competing for the prime market locations. The Commission has instituted several investigatory and enforcement actions over the years and has thereby experienced first-hand the magnitude of the problems that can exist in the industry. There will always be a considerable amount of competition in the pay telephone market. This has been recognized by the Legislature by including the provision of public pay telephone services in the Basket III service in the PURA 95. Section 3.358(a)(5), PURA 95. Giving the local exchange companies the ability to deny the provision of competitive services based upon a competitor's compliance with the Commission's rules only serves to increase the animosity in the industry and create opportunities for claims of anti-competitive conduct.

Moreover, the Commission now has real enforcement tools to deal directly with violations of its rules. Additionally, the Commission also has been granted additional authority in the enforcement of administrative penalties in the recent

Legislative session. PURA 95, §1.3215. The Commission should seek to exercise its jurisdiction in this regard rather than to continue to enforce its rules through Southwestern Bell's tariffs. A further problem is the provision that the proof of registration requirement only applies to customer owned pay telephone services provided by dominant certificated telecommunications utilities. Initially, there is no such term in the PURA 95 as "dominant certificated telecommunications utility" (DCTU). This term has been created in proposed amendments to the Commission's Substantive Rules in Project No. 14372. Southwestern Bell will be filing comments in that proceeding addressing the reasons why the Commission should not create a non-statutory entity called a dominant certificated telecommunications utility in the revisions of its substantive rules. Suffice it to say that for purposes of the proposed pay telephone rules that it is totally inappropriate to create such an entity as it only creates confusion and results in the misinterpretation and misapplication of the provisions of the PURA 95.

For example, in the area of customer owned pay telephone services, the requirements of proof of registration would only apply to the incumbent local exchange company and CCNs, COAs and SPCOAs who have gained such market power as to classify themselves into the definition of a dominant certificated telecommunications utility. It is unlikely that other CCNs, COAs or SPCOAs will fall within that definition in the near term. This means that a potential customer of customer owned pay telephone services will only have to demonstrate proof of registration with the Commission if they purchase their access from an incumbent local exchange company. This leads to question the purpose of the proposed rule; is it to insure compliance with the Commission's registration requirements or is it to encourage non-compliant providers to purchase their services from non-dominant CCNs, COAs and SPCOAs? Southwestern Bell believes that the Commission's intent behind the rule is to encourage compliance with the registration requirements. This intent is not the result, however, as it only serves to encourage non-registered entrants to the pay telephone market to purchase their services from non-dominant CCNs, COAs and SPCOAs.

Southwestern Bell recognizes that the Commission only has limited jurisdiction over COAs and SPCOAs in the PURA 95. It is therefore incumbent upon the Commission to seek to balance that limited jurisdiction with the jurisdiction it retains over the incumbent local exchange companies. The Commission should not be placing such regulations on services offered by the incumbent local exchange companies as would encourage customers to purchase from non-dominant carriers in order to escape Commission regulations. If the Commission regulations are designed to promote the public interest and consumer protections, then the Commission must examine its rules in light of the different telecommunications categories created by the Legislature. Accordingly, the Commission should not include rules that have the effect of charging Southwestern Bell with the enforcement of the rules or encourage violators to go to a non-dominant carrier for services.

Respectfully submitted,

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Before the
PUBLIC SERVICE COMMISSION OF MARYLAND

In the Matter of the AT&T Petition for Suspension and Investigation of the Tariff Revisions of Bell Atlantic - Maryland, Inc., filed and approved under Transmittal No. 989, Establishing Rates and Charges for Pay Telephone Line Services, and Transmittal No. 995, Concerning the Withdrawal of IXC Coinless Telephone Service, Semi-Public Service and Public Telephone Service	)	**Case No.**

BELL ATLANTIC'S OPPOSITION TO
AT&T'S PETITION FOR SUSPENSION AND INVESTIGATION

Preliminary Statement

Bell Atlantic - Maryland, Inc. ("BA-MD") respectfully submits that the Commission should dismiss the petition filed on March 28, 1997, by AT&T Communications of Maryland, Inc. ("AT&T"). AT&T's Petition is a baseless and belated attack on tariffs which have already been reviewed and duly approved by this Commission.

AT&T asks the Commission 1) to institute an investigation of BA-MD's revised pay telephone tariff which was approved by this Commission on March 5, 1997; 2) to direct BA-MD to reduce BA-MD's intrastate Carrier Common Line ("CCL") charges to reflect the "removal" of alleged intrastate subsidies and the alleged "increase" in payphone compensation that BA-MD will receive from interexchange carriers (IXCs); and 3) to declare that beginning April 15, 1997, CCL revenues will be subject to refund for the CCL reductions requested by AT&T.[1]

AT&T's Petition is both procedurally and substantively invalid, and should be rejected.

I. AT&T'S OPPOSITION TO THE TARIFF REVISIONS IS UNTIMELY AND WITHOUT MERIT

AT&T's Filing is Untimely

On January 15, 1997, BA-MD filed proposed tariff revisions under Transmittal Number 989 to offer new payphone line access services.[2] BA-MD filed these tariffs and supporting cost studies to comply with the orders of the Federal Communications Commission ("FCC") implementing the payphone provisions in Section 276 of the Telecommunications Act of 1996 ("the Act").[3] Specifically, the FCC's Payphone Orders required BA-MD to file, by January 15, 1997, state tariffs for the basic payphone access lines and network services that BA-MD would

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1 AT&T Petition at pp. 1-2, 10.

2 BA-MD also filed revisions to withdraw public and other payphone services from the tariffs in February 1997 under Transmittal No. 995, not "996" as indicated in the caption of AT&T's petition. At any rate, although this tariff Transmittal was included by AT&T in the caption of its filing, AT&T does not discuss these withdrawals.

3 Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996) ("Report and Order"), appeal docketed *sub nom.*, Illinois Public Telecommunications Assn. v. FCC and United States, Case No. 96-1394 (D.C. Cir., filed Oct. 17, 1996), recon., FCC 96-439 (rel. Nov. 8, 1996) ("Reconsideration Order)"; Order, DA 97-678 (Common Carrier Bureau rel. April 4, 1997) ("Clarification Order"); Order, DA 97-791 (Common Carrier Bureau rel. April 15, 1997) ("CEI Approval Order"), Order, DA 805 (Common Carrier Bureau rel. April 15, 1997), Order ("New Services Order") (DA 97-814) Order, (Accounting and Audits Division rel. April 15, 1997) ("CAM Order"), (hereinafter, collectively, the "Payphone Orders")

use with its own payphone equipment to provide its payphone services on a deregulated basis,[4] and to reclassify its payphones as deregulated customer premises equipment ("CPE") by no later than April 15, 1997. The FCC required that these intrastate tariffs be effective by no later than April 15, 1997, and that they be cost-based, nondiscriminatory, and consistent with the requirements of Section 276 of the Act.[5] The FCC left the review of these tariffs to the states.[6]

Under the tariffs filed with Transmittal 989, Network Controlled Coin Lines ("NCCL") and Network Controlled Non-Coin Lines ("NCNL") are included within BA-MD's Pay Telephone Line tariff. These access lines constitute the underlying network services that BA-MD has used and will subscribe to in the future in operating its network-controlled ("dumb") payphones as a deregulated service. The tariffs made NCCL and NCNL lines available to both BA-MD and unaffiliated payphone service providers under the same terms and conditions.

BA-MD's proposed tariff revisions were initially presented to the Commission at its Administrative Meeting on February 19, 1997. An attorney for People's Telephone, an independent payphone service provider, appeared at this meeting and requested additional time to review and respond to the filing. In consideration of this request, the Commission deferred its decision until March 5, 1997, to permit this intervenor an opportunity to file its comments. Peoples Telephone Company did not file any comments, however, and at the Commission's

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4 Reconsideration Order at ¶163.

5 *Id.*

6 The FCC held that "LECs are not required to file tariffs for the basic payphone line for smart and dumb payphones with the Commission. We will rely on the states to ensure that the basic payphone line is tariffed by the LECs in accordance with the requirements of Section 276." Payphone Reconsideration Order at ¶163.

March 5, 1997 Administrative Meeting, requested yet another extension. The Commission rejected that request and approved the tariffs.[7]

AT&T did not raise any objections to BA-MD's filing at any time prior to or during the Commission's March 5, 1997, Administrative Meeting. Instead, over three weeks later, on March 28, 1997, AT&T filed its Petition urging the Commission to rescind its approval and suspend the tariffs.

AT&T offers no explanation or excuse for its delay. AT&T has been an active participant in the proceedings before the FCC and was fully informed of the critical dates for the filing and review of state tariffs.[8] This Commission should, therefore, reject AT&T's petition as untimely.

Objections to Rates are Unsupported

AT&T offers no support for its speculation that the BA-MD rates for payphone access line services "appear to be artificially high." (AT&T Petition at p. 6) BA-MD submitted full cost support for its rates for the NCCL and NCNL lines which demonstrate that the rates are cost-based, just and reasonable. Also, as noted in the Staff Comments, the rate for the COCOT

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[7] The Commission Staff had filed comments recommending approval of the tariffs and indicating that BA-MD was "submitting the filing as the first phase of replacing regulation with competition in the payphone telephone industry." Comments of the Telecommunications Division re BA-MD Transmittal No. 989 (TE-1866) February 12, 1997. The Staff Comments also recited the provisions of Section 276 prohibiting a regional Bell operating company from subsidizing its payphone service from exchange or exchange access operations and from discriminating in favor of its own payphone service. *Id*

[8] The Payphone Reconsideration Order specifically provided that state tariffs were to be filed by January 15, 1997, not April 15, 1997, as AT&T represents in its Petition. (AT&T Petition at p. 3) Thus, AT&T should have been fully aware that tariff filings, if any, would have been filed by January 15, 1997.

(Customer Provided Coin Operated Telephone) line used by BA-MD's competitors to operate "smart" payphones is identical to the single business line rate and is less than the new NCCL and NCNL rates.[9] Thus, the rates that BA-MD competitors will pay for COCOT lines are lower than the rates that BA-MD will charge itself for NCCL and NCNL lines.

AT&T has made no showing justifying the suspension of tariffs based on the rates established. Rather, AT&T's new found interest in these tariffs is simply an attempt to delay and avoid its own legal obligation to provide BA-MD fair compensation for usage of BA-MD's payphones for AT&T calls.[10]

New Services Test

AT&T asserts that BA-MD's tariffs do not satisfy the FCC's "new services test." This is not true. The "new services" test requires that the rate must, at a minimum, cover the direct costs for the service.[11] The test is otherwise not materially different from the state standard of "just and reasonable" rates.[12] The new services test requires the establishment of reasonable rates, but the FCC indicated that the test is flexible and it did not dictate that any particular costing methodology or specified loading be applied.[13]

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9 Staff Comments at page 4.

10 Effective April 15, 1997, AT&T and other IXCs must collectively pay $45.85 per month per payphone to compensate for the dial-around calls to IXCs placed from these phones. BA-MD's eligibility for this compensation required compliance with a seven point checklist, including having effective state tariffs by April 15, 1997.

11 47 C.F.R. §61.49

12 Art. 78 §69(a)

13 47 C.F.R. §61.49; *Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture,* CC Docket No. 89-79,

As mentioned above, BA-MD submitted cost data to the Commission for the NCCL and NCNL lines. Those studies contain the direct costs for these lines and demonstrate that the applicable rates are just and reasonable. Moreover, in compliance with the FCC's order of April 15, 1997, BA-MD will conclude its review of both these and pre-existing tariffs, and file any revisions as may be required by the FCC's established deadline of May 19, 1997. If AT&T is dissatisfied with any tariff changes proposed by BA-MD, it will have an opportunity to comment at that time.

Accordingly, AT&T's oppositions to the already approved tariffs as well as its request for discovery and hearings should be rejected.

II. The Reduction of CCL Charges to Remove Alleged Intrastate Subsidies is Neither Required Nor Relevant to the Sufficiency of the Proposed Tariffs.

AT&T has confused and distorted the FCC requirements pertaining to the removal of intrastate subsidies of payphone services. The Payphone Orders direct that each local exchange carrier ("LEC") must file any tariffs needed to remove any interstate or intrastate subsidies of its deregulated payphone services.[14] Thus, if purchasers of non-payphone access or exchange services had historically paid rates that were applied to recover the costs of maintaining and operating payphones, such indirect cost subsidies were to be removed as part of the deregulation of the LEC's payphone service.

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6 FCC Rcd 4524, (1991) ¶38. Nor did the FCC require that this Commission institute extraordinary discovery or hearings as requested by AT&T. To the contrary, the FCC's own review of federal tariffs typically does not entail such proceedings.

14 Reconsideration Order at ¶163.

Nothing in the Act or the Payphone Orders indicates that the approval of tariffs for payphone access lines should be conditioned on the independent requirement that any existing subsidies of payphone costs from exchange or access charges must be removed. Nor has AT&T made any showing of how or why its claim for a CCL reduction has any bearing on the tariff rates it has challenged. Therefore, the claim for reduction in CCL charges provides no basis for suspension or investigation of the tariffs for payphone line services.

Moreover, AT&T's arguments for a reduction in CCL charges are fatally flawed for the following reasons. First, the requirement that carriers must now begin compensating BA-MD for use of their payphones is not, as AT&T suggests, a direct "offset" for the reduction of federal or state carrier common line charges. (AT&T Petition p.6). Second, the intrastate access charges that carriers have paid in Maryland have not subsidized any portion of the intrastate costs of operating BA-MD payphones. AT&T's claim for a $15.5 million reduction in CCL charges is based on the absurd notion that 100% of all intrastate payphone costs have been borne by IXCs and totally disregards the direct charges that end users have paid. In reality, BA-MD's intrastate payphone costs have been recovered from payphone charges, principally coin revenue, and have not been subsidized by any other revenue source or class of subscribers.

No Equivalency between CCL and Call Compensation

Section 276 (b) provides that all payphone providers (LEC and nonLEC alike) are to be compensated for each and every completed call. In the past, LEC payphone providers were not permitted to receive the commissions for presubscribed calls or compensation for dial-around access code calls that IXCs typically paid to independent payphone providers. Thus, while an IXC, such as AT&T, could receive numerous revenue producing calls from a payphone that was maintained and operated by BA-MD, it paid no direct fee for use and upkeep of the payphone that had enabled such calls.

The Payphone Orders establish a per call compensation ("PCC") plan based on an initial market-based default proxy of 35 cents per call. Beginning on October 7, 1997, this PCC will apply to every completed call for which a payphone provider is not otherwise compensated, including direct dialed calls using the presubscribed carrier and dial around calls using an access code to reach other carriers. BA-MD will not only receive such PCC for its payphones, it will also be required, as a carrier and operator service provider, to pay PCC to all payphone providers, including AT&T, for BA-MD calls from their payphones. The obligation to pay PCC applies to all carriers, not just IXCs.

In the interim, a flat monthly rate of $45.85 per payphone will be paid by IXCs as compensation for 1-800 calls and dial around access code calls (e.g., 10XXX). This amount represents an average of 131 dial around calls at the 35 cent PCC rate and does not include any compensation for calls made to the IXC as the presubscribed carrier of a payphone. While the FCC conditioned LEC eligibility for this compensation on removal of intrastate subsidies as well as six other preconditions,[15] the compensation to be paid by IXCs was not calculated to offset or correspond to the amount of any pre-existing subsidies from exchange or exchange access services. It is, therefore, not surprising that AT&T cites no authority for its unfounded and fanciful proposition that the FCC "has directed the LECs' Common Carrier Charges be reduced to offset that payment [$45.58]." (AT&T Petition at p. 6)

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[15] *Id.*

No Intrastate Subsidies Warranting CCL Reduction Exist

Section 276 of the Act and the Payphone Orders require removal of intrastate subsidies if they exist, but no removal is warranted if such subsidies do not exist. AT&T's argument for an intrastate CCL reduction relies solely upon a superficial and fallacious analogy to the removal of payphone subsidies in the federal arena. Federal CCL charges have historically recovered an interstate payphone rate element equivalent to 25% of the total payphone costs borne by BA-MD in Maryland, and BA-MD has filed FCC tariffs to remove these costs.[16] It does not follow that the remaining 75% of costs that are allocable to the intrastate jurisdiction, estimated by AT&T as $15.5 million, have been wholly subsidized by intrastate CCL access charges. (AT&T Petition at p. 9.)

The federal regulations identified pay telephone costs as an element of the carrier access line charges.(47 C.F.R. §69.4). This CCL payphone subsidy in the interstate jurisdiction under FCC tariffs was not only explicit, but logical. IXCs typically provide and receive revenue for interstate calls from payphones. These payphones serve as a sales channel for the IXCs. BA-MD had no means to recover interstate payphone costs from end user charges because it generally provides only local or intrastate, intraLATA toll calls. Thus, access charges from the IXCs who benefited from the "sales" of interstate calls made using these payphones were appropriate and necessary to recover the associated costs allocated to interstate usage.[17]

16 BA-MD revisions to its FCC tariffs to remove this payphone element by reducing its federal interstate CCL charges became effective on April 15, 1997.

17 BA-MD also imputed these charges to itself when it provided interstate calls such as in the Hagerstown LATA between western Maryland and West Virginia.

For intrastate purposes, however, the situation is significantly different. The CCL charges in Maryland do not contain any explicit rate element for payphone costs. Moreover, Bell Atlantic has effectively been able to recover its costs through direct charges for payphone usage. Bell Atlantic could and did charge end users for intrastate, intraLATA calls made from these payphones. By definition, a subsidy could not have existed if these revenues received directly from its payphone operations covered the intrastate costs for the operation of such payphones, including the equipment, maintenance and collection costs. Revenues were derived from BA-MD calls. The coin revenue that BA-MD received more than covered all intrastate payphone costs so that not even an implicit subsidy from other revenue sources can be inferred.[18]

The intrastate costs covered by BA-MD revenues were not limited to the costs attributable to BA-MD calls. These payphone upkeep costs also enabled IXCs to receive intrastate, interLATA calls as well as intrastate local and toll dial around calls placed through IXCs from BA-MD payphones. Yet, no mechanism for recovery for such intrastate IXC calls existed, so there has been no subsidy or compensation for the value IXCs have received on an intrastate basis from LEC payphones. Thus, BA-MD is not receiving a "windfall" as alleged by AT&T; it is AT&T that had been enjoying the windfall and must now provide compensation for the payphones just as AT&T has historically compensated independent payphone providers.

18 BA-MD will provide the Commission documentation of these costs..

Conclusion

Accordingly, BA-MD respectfully submits that the Commission should deny AT&T's Petition in its entirety.

Respectfully Submitted,

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AUG 14 1997
MISS. PUBLIC SERVICE COMMISSION

Mr. Brian Ray
Executive Secretary
Mississippi Public Service Commission
550 High Street
Walter Siller State Office Bldg., 19th Floor
Jackson, Mississippi 39215-1174

Re: Mississippi P.S.C. Tariff No. 2

'97-UN- 497

Dear Mr. Ray:

Cable & Wireless, Inc. ("CWI"), hereby submits for filing an original and ten (10) copies of revised pages of its above-referenced tariff. Pages submitted with this filing are shown on the Check Sheet located on 7th Revised Page 1.

By this filing, CWI incorporates a surcharge for calls originated at payphones, to recover its costs of payphone compensations, ordered by the Federal Communications Commission ("FCC"), in FCC Docket No. 96128

Also enclosed is a receipt copy of this filing. Please date-stamp the receipt copy and return it to me in the enclosed self-addressed stamped envelope.

Should any questions arise regarding this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

Etta L. Wolfe

Etta L. Wolfe
Tariff Coordinator/Analyst
(703) 734-4457

(Enclosures)

cc: Bill Wilkerson (w/encl.)

Check Sheet

The pages of this Tariff are effective as of the date shown at the bottom of each page. Original and revised pages as named below contain all changes from the original Tariff that are in effect on the date hereof.

Page	Number of Revision	Page	Number of Revision
Title	Original	31	2nd
1	7th*	32	4th
2	5th	33	2nd
3	2nd	34	1st
4	Original	35	4th
5	Original	36	1st
6	Original	37	1st
7	Original	37.1	Original
8	Original	38	3rd
9	Original	39	4th
10	Original	40	5th*
11	Original	41	3rd
12	Original	41.1	2nd
13	1st	41.2	1st
14	1st	41.3	1st
15	Original	41.4	Original
16	Original	41.5	Original
17	Original	42	6th*
18	Original	43	2nd
19	Original	44	1st
20	1st	45	Original
20.1	3rd	46	Original
20.2	3rd		
20.3	1st		
21	Original		
22	Original		
23	Original		
24	2nd		
25	2nd		
26	2nd		
27	1st		
28	3rd		
29	3rd		
30	4th		

*Pages submitted with this filing.